- Babbitt certainly knew Ickes had called Babbitt's office only two months earlier about the Pequot casino land into trust issue, and that the White House Chief of Staff had called Babbitt in August 1994 about the Sault Ste. Marie off-reservation gaming matter, increasing the likelihood that he would have attributed to Ickes a role in compelling at least the timing of the decision.

This independent circumstantial evidence provides ample support for Eckstein's separately corroborated recollection.[817] Though arguments can be made that some of this evidence also could support Babbitt's position, or the otherwise unsubstantiated notion that Babbitt and Ickes actually spoke at some point about the application, it is sufficient to clear the legal bar of the two-witness rule.

Despite this independent evidence, the defense in any case brought on these facts would undoubtedly characterize this situation as exactly the type of one-on-one "swearing contest" that the two-witness rule was meant to prevent from resulting in a criminal conviction. Because this issue would be considered by the jury, the prosecution would have to anticipate the substantial appeal of a defense predicated on this theory. While this factor alone would not dissuade us from bringing a case if all other elements of the charge were well-satisfied, we were mindful of this likely aspect of trial strategy.

[817]Eckstein's prior consistent statements to Goff, Florence Eckstein, Brown and Havenick about the conversation – all within a short time of the conversation itself – probably would not be admissible under the Federal Rules of Evidence in the government's case-in-chief, so would not aid in satisfying the two witness rule. Nevertheless, such prior consistent statements assisted investigators in evaluating the credibility of Eckstein's account.